IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.1019 OF 2002
Along with
Civil Application no.1378 of 2002

Ramji Dnyanu Patil and Anr. .. Appellants
Vs
Sayyed Hyder Nadaf, .. Respondent.

Mr G.H.Keluskar, for the appellants.
Ms Archana Kololgi i/b Mr T.S.Ingale, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 20.02.2007
PC:

1. Heard Mr Keluskar, learned counsel for the appellants and Mr Kololgi, learned counsel for the respondent.

2. The Judgments of the courts below, decreeing the suit filed by the respondent-plaintiff for redemption of mortgage are under challenge in the instant appeal. I perused the impugned judgments and more particularly the observations made by the appeal court in paragraphs 10 to 16 of the judgment. The courts below, having regard to overall facts and circumstances of the case as also the contents of the document dated 30.7.1970, have recorded the concurrent findings that the appellants-defendants failed to prove that the nature of

transaction was out and out sale and not mortgage as claimed by the respondent-plaintiff. I perused the questioned document. The document was styled as conditional sale-deed and it shows that the plaintiff had taken an amount of Rs.1000/- from deceased Shewantabai for household expenses. The recitals of the document further show that it was a mortgage by conditional sale. The document does not show that the title was transferred. It is clearly seen that only interest in the suit property was transferred by handing over possession of the suit house and the document nowhere shows that from the date of its execution the title of the suit property was passed to Shewantabai. The courts below have rightly appreciated the nature of the transaction on the basis of the contents thereof and also the attending circumstances, which clearly support the case of the respondent-plaintiff. In my opinion, no substantial question of law is involved in the appeal. There is sufficient material on record to sustain the findings of facts recorded by the courts below. In the circumstances, the second appeal stands dismissed. As a consequence thereof, the civil application for interim relief is rejected.

(D.B.BHOSALE,J.)